

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

APR 02 2010

ADMINISTRATIVE HEARING
COMMISSION

BETTE A. DEVRIES/FINCHER)

Petitioner,)

Case No.: 10-0288 DI

vs.)

DIRECTOR OF THE DEPARTMENT)
OF INSURANCE, FINANCIAL)
INSTITUTIONS AND PROFESSIONAL)
REGISTRATION)
STATE OF MISSOURI,)

Respondent.)

ANSWER AND MOTION FOR SUMMARY DECISION

COMES NOW, John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration, through counsel, and hereby answers and moves for summary decision on Petitioner Bette A. DeVries/Fincher's Complaints as follows:

1. The Director has insufficient information to admit or deny the allegations in Petitioner's February 24, 2010 Complaint, and therefore denies the same.
2. The Director admits to Petitioner's allegations in paragraph 1 of Petitioner's March 19, 2010 Complaint.
3. The Director admits to Petitioner's allegations in paragraph 2 of Petitioner's March 19, 2010 Complaint.
4. With regard to Petitioner's allegations in paragraph 3 of Petitioner's March 19, 2010 Complaint, the Director admits that Petitioner is attempting to appeal the bail bond agent license refusal to the Administrative Hearing Commission, but denies that such appeal is adequate under the statutes and rules applicable to appeals to this Commission.
5. To the extent DeVries/Fincher alleges in either Complaint that the Director wrongfully refused DeVries/Fincher's application for a bail bond agent license, the Director denies the same.
6. The Director denies all allegations not expressly admitted herein.

In further Answer, the Director states as follows:

7. On January 28, 2010, the Director issued an Order refusing DeVries/Fincher's application for a bail bond agent license. *See Exhibit A, attached.*
8. On January 29, 2010, the Director notified DeVries/Fincher by certified mail that her application for a bail bond agent license had been refused. *Id.*
9. In the Order and Notice mailed to DeVries/Fincher, the Director advised DeVries/Fincher of her right to appeal the refusal within 30 days after the mailing of the Notice pursuant to § 621.120, RSMo (2000). *Id.*
10. On or about February 24, 2010, DeVries/Fincher filed a Complaint (February 24, 2010 Complaint) with the Administrative Hearing Commission, the body of which stated "I would like to request a review on the matter of Refusal to Issue Bail Bond Agent License to Bette DeVries. Please contact me at the earliest possible date."
11. On or about March 19, 2010, DeVries/Fincher filed a Motion for Leave to File Appeal Out of Time and a second Complaint (March 19, 2010 Complaint) with the Administrative Hearing Commission.
12. The Commission scheduled a hearing on this matter for May 26, 2010. Such date is at least 45 days distant.

MOTION FOR SUMMARY DECISION

The Director may refuse to issue a bail bond agent license to DeVries/Fincher because she entered an Alford plea to a crime of moral turpitude which provides discretionary grounds to refuse her license pursuant to § 374.755.1(2), RSMo (Supp. 2008), and mandatory grounds to refuse her license pursuant to Supreme Court Rule 33.17. DeVries/Fincher violated the laws of the state on multiple occasions which provides further discretionary grounds to refuse her license pursuant to § 374.755.1(6), RSMo (Supp. 2008).

A. GROUNDS FOR REFUSAL – FELONY OR CRIME OF MORAL TURPITUDE

13. The Director may refuse to issue a bail bond agent license to DeVries/Fincher pursuant to § 374.755.1(2), RSMo (Supp. 2008), because DeVries/Fincher entered an Alford plea to the crime of Endangering the Welfare of a Child in the Second Degree, a category 3 crime of moral turpitude based on the circumstances of her crime. Because DeVries/Fincher's Alford plea to a crime of moral turpitude took place within the last 15 years, she does not meet the minimum qualifications for surety as provided by Supreme Court Rule and the Director must refuse to issue a bail bond agent license to DeVries/Fincher.

14. The uncontroverted facts are as follows:

- a. On or about June 22, 2009, the Department of Insurance, Financial Institutions, and Professional Registration ("Department") received

DeVries/Fincher's Missouri Uniform Application for Bail Bond or Surety Recovery License ("Application").¹ See *Exhibit B, attached*.

- b. In the "Background Information" section, Question B asks "Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you? Applicants are required to report all criminal cases whether or not a sentence has been imposed, a suspended imposition of sentence has been entered or the applicant has pled nolo contendere (no contest)."
- c. DeVries/Fincher answered "Yes" to Background Question B and disclosed three criminal matters.
- d. On or about November 2, 2000, in Case # CR-02-000-05077M, in the Circuit Court of Camden County, Missouri, DeVries/Fincher was charged with the class A misdemeanor of Endangering the Welfare of a Child in the Second Degree in violation of § 568.050, RSMo (2000).
- e. A person commits the crime of Endangering the Welfare of a Child in the Second Degree, in violation of § 568.050, RSMo (2000), if:

He or she with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old;

- f. The prosecuting attorney for Camden County, Missouri alleged, through an Information filing, that DeVries/Fincher acted with criminal negligence in a manner that created a substantial risk to the body and health of a child less than 17 years old, by encouraging the child to dress in sexually seductive clothing in the presence of a 17 year old male, by encouraging and assisting the 17 year old male in binding the child's hands and feet, by removing and rearranging the child's clothing in such a way as to expose the child's breasts in the presence of the 17 year old male, by encouraging and aiding the 17 year old male in rubbing a liquid substance on the child's breasts with his hands, by inviting the 17 year old male into the home and allowing him to stay in the home resulting in the 17 year old male having non-consensual sexual intercourse with the child. DeVries/Fincher disclosed to the Department that the child involved was her 15 year old daughter. DeVries/Fincher entered an Alford² plea, the court found her guilty, suspended the imposition of sentence, and placed her on supervised probation for two years. See *Exhibit C, attached*.

¹ DeVries/Fincher used only the name DeVries on her Application.

² An Alford plea is not an admission of guilt, but is a type of guilty plea for the purpose of statutes that allow discipline for guilty pleas. *Watkins v. State Bd. of Reg'n for the Healing Arts*, 651 S.W.2d 582, 583-84 (Mo. App., W.D. 1983).

- g. On or about November 6, 1986, in Case No. CR286-1759FX, in the Circuit Court of Camden County, Missouri, DeVries/Fincher, then known as Bette Williams or Betty A. Williams, was charged with the class C felony of assault in the second degree in violation of § 565.060, RSMo (Supp. 1985). See *Exhibit D, attached*.
 - h. A person commits the crime of assault in the second degree, in violation of § 565.060, RSMo, if the person recklessly causes physical injury to another person.
 - i. The prosecuting attorney for Camden County, Missouri, alleged, through an information filing, that DeVries/Fincher, then known as Bette Williams or Betty A. Williams, recklessly caused serious physical injury to Larry Williams by stabbing him in the chest with a knife. DeVries/Fincher pled guilty to the crime of assault in the second degree, the court accepted her guilty plea, suspended the imposition of sentence, and placed DeVries/Fincher on probation for five years. DeVries/Fincher was released from probation on or about July 3, 1990.
 - j. DeVries/Fincher also disclosed that in 1981 or 1982 in Camden County, Missouri, she "failed to pay a fine and cost for a NSF check. A warrant was issued. [She] paid the fine and cost and the warrant was withdrawn." The Circuit Court of Camden County, Missouri was unable to locate any court records to verify or refute DeVries/Fincher's disclosure.
15. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).
16. In *Brehe v. Mo. Dept. of Elementary & Secondary Education*, which involved an attempt to discipline a teacher's certificate under § 168.071, RSMo, for committing a crime involving moral turpitude, the court referred to three categories of crimes, the categories drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):
- (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);
 - (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and
 - (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes).

See *Brehe v. Mo. Dept. of Elementary & Secondary Education*, 213 S.W.3d 720, 725

(Mo. App. 2007).

17. Category 1 crimes, since they necessarily involve moral turpitude, require no analysis beyond their elements to show moral turpitude; category 3 crimes require some examination of the facts supporting the conviction in order to determine whether they involve moral turpitude. See *Brehe* at 725-727; See also *Joyce v. Dir. of Dept. of Ins.*, Mo.Admin. 07-1364 DI, 2008 WL 4182673 (Mo.Admin.Hrg.Comm'n.). While Endangering the Welfare of a Child in the Second Degree doesn't necessarily involve moral turpitude, the circumstances of DeVries/Fincher's crime evidence moral turpitude. DeVries/Fincher's conduct showed disrespect for the laws and children, including her own daughter. DeVries/Fincher's conduct demonstrated the baseness, vileness, and depravity in the private and social duties society expects of a person and a parent.
18. Because DeVries/Fincher entered an Alford plea to a crime of moral turpitude within the past 15 years, she does not meet the qualifications of a surety under Supreme Court Rule 33.17(c) and, thus, does not meet the minimum qualifications of a bail bond agent under § 374.715.1, RSMo (Supp. 2008), which requires, in part, that an applicant meet the qualifications for surety on bail bonds as provided by Supreme Court Rule. Therefore, because DeVries/Fincher does not meet the minimum qualifications of a bail bond agent, the Director has no discretion and must refuse to issue DeVries/Fincher a bail bond agent license. See *Joyce v. Dir. of Dept. of Ins.*, Mo.Admin. 07-1364 DI, 2008 WL 4182673 (Mo.Admin.Hrg.Comm'n.).

B. GROUNDS FOR REFUSAL – VIOLATION OF THE LAWS OF THIS STATE

19. The Director may refuse to issue a bail bond agent license to DeVries/Fincher pursuant to § 374.755.1(6), RSMo (Supp. 2008), because DeVries violated a provision of the laws of this state by committing the crimes of Endangering the Welfare of a Child in the Second Degree and assault in the second degree.
20. The facts are as follows:
 - a. The Director incorporates the facts alleged in paragraphs 9d-9i, above, as though fully set forth herein.
 - b. DeVries/Fincher acted with criminal negligence in a manner that created a substantial risk to the body and health of, her daughter, a child less than 17 years old, by encouraging her daughter to dress in sexually seductive clothing in the presence of a 17 year old male, by encouraging and assisting the 17 year old male in binding her daughter's hands and feet, by removing and rearranging her daughter's clothing in such a way as to expose her daughter's breasts in the presence of the 17 year old male, by encouraging and aiding the 17 year old male in rubbing a liquid substance on her daughter's breasts with his hands, by inviting the 17 year old male into the home and allowing him to stay in the home resulting in the 17 year old male having non-consensual

sexual intercourse with her daughter. DeVries/Fincher's conduct was in violation of § 568.050, RSMo (Supp. 1985) and constitutes a violation of the laws of this state pursuant to § 374.755.1(6), RSMo (Supp. 2008). *Exhibit C*.

- c. DeVries/Fincher recklessly caused serious physical injury to Larry Williams by stabbing him in the chest with a knife. DeVries/Fincher's conduct was in violation of § 565.060, RSMo (Supp. 1985) and constitutes a violation of the laws of this state pursuant to § 374.755.1(6), RSMo (Supp. 2008). *Exhibit D*.

C. LICENSE REFUSAL IS DISCRETIONARY

21. The Director has considered the history of DeVries/Fincher and all the circumstances surrounding DeVries/Fincher's Application. DeVries/Fincher's criminal history indicates a substantial risk to the public should DeVries/Fincher receive a bail bond agent license, as bail bond agents must be worthy of trust and DeVries/Fincher has breached that trust with regard to both her daughter and her then spouse. DeVries/Fincher entered an Alford plea to a crime of moral turpitude. DeVries/Fincher displayed recklessness with regard to the physical safety of her then spouse, and later, her daughter. DeVries/Fincher also displayed financial irresponsibility with regard to her personal finances. Bail bond agents must be financially responsible as it is within their authority to accept money on behalf of general bail bond agents and enter into financially binding contracts on behalf of general bail bond agents.
22. Licensure of DeVries/Fincher would not be in the public interest, and, accordingly, the Director exercised his discretion to refuse to issue DeVries/Fincher a bail bond agent.
23. The Director has established that cause exists to refuse DeVries/Fincher's bail bond agent license based upon §§ 374.755.1(2) and (6), RSMo (Supp. 2008). Once cause for refusal is established, the Director's discretion should be upheld pursuant to § 374.051, RSMo (Supp. 2009). *Hoelscher v. Dir. of Dept. of Ins.*, Mo.Admin. 09-1186 DI, 2009 WL 4661717 (Mo.Admin.Hrg.Comm'n.).
24. The principal purpose of § 375.141, RSMo (Supp. 2008), is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo.App. E.D. 1984). The Director's refusal to license DeVries/Fincher should be upheld to protect the public.

AFFIRMATIVE DEFENSES

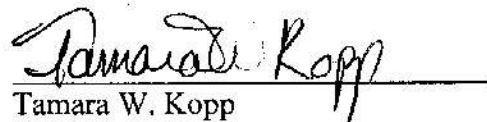
25. DeVries/Fincher's February 24, 2010 Complaint merely states: "I would like to request a review on the matter of Refusal to Issue Bail Bond Agent License to Bette DeVries. Please contact me at the earliest possible date." DeVries/Fincher's Complaint does not comply with § 621.120, RSMo (2000), or 1 CSR 15-3.350(2)(C), in that DeVries/Fincher's February 24, 2010 Complaint has not set out with

particularity her qualifications for licensure and the March 19, 2010 Complaint should therefore be dismissed.

26. DeVries/Fincher's March 19, 2010 Complaint does not comply with § 621.120, RSMo (2000), or 1 CSR 15-3.350(2)(C), in that DeVries/Fincher's March 19, 2010 Complaint has not set out with particularity her qualifications for licensure and the March 19, 2010 Complaint should therefore be dismissed.
27. DeVries/Fincher's allegations in both the February 24, 2010 Complaint and March 19, 2010 Complaint, taken as true, fail to allege a claim upon which relief may be granted, and the Director's pleading affirmatively establishes that he is entitled to entry of a summary decision in his favor. Therefore, under 1 CSR 15-3.446(5), the Director is entitled to Summary Decision in the Director's favor.
28. The pleadings, together with Exhibits A through D, show there is no genuine issue as to any material fact and the Director is entitled to judgment as a matter of law.

WHEREFORE, the Director, having fully answered both Complaints, respectfully requests this Commission grant the Director's motion for summary decision, uphold the Director's decision to refuse DeVries/Fincher's application for a bail bond agent license, and such other relief as this Commission deems just and proper.

Respectfully submitted,



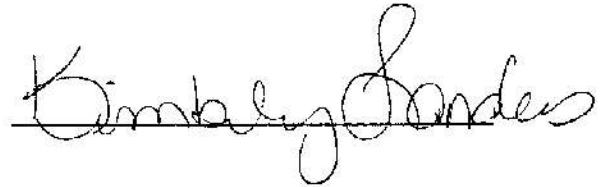
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ATTORNEY FOR RESPONDENT
Director of the Missouri Department of
Insurance, Financial Institutions and
Professional Registration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing, including all attachments, was mailed first class, with sufficient postage attached, via the United States Postal Service on this 2nd day of April, 2010 to:

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Counsel for Bette A. DeVries/Fincher
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Facsimile: (573) 348-2026

A handwritten signature in cursive script, reading "Kimberly Jones", written over a horizontal line.

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